

The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History

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Summary

On February 12, 2010, President Barack Obama signed H.J.Res. 45 into law, as P.L. 111-139. In addition to an increase in the statutory limit on the public debt to \$14.294 trillion, the act contains two titles dealing with budgetary matters. Title I, referred to as the Statutory Pay-As-You-Go Act of 2010, establishes a new budget enforcement mechanism generally requiring that direct spending and revenue legislation enacted into law not increase the deficit. Title II, which contains only a single section, pertains to routine investigations by the Comptroller General aimed at eliminating duplicative and wasteful spending. This report provides a summary and legislative history of P.L. 111-139, focusing on the features of the Statutory Pay-As-You-Go Act of 2010.

The Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO Act) establishes a process intended, as Section 2 of the act states, “to enforce a rule of budget neutrality on new revenue and direct spending legislation.” The budgetary effects of revenue and direct spending provisions enacted into law, including both costs and savings, are recorded by the Office of Management and Budget (OMB) on two PAYGO scorecards covering rolling five-year and 10-year periods (i.e., in each new session, the periods covered by the scorecards roll forward one fiscal year). The budgetary effects of PAYGO measures are determined by statements inserted into the *Congressional Record* by the chairmen of the House and Senate Budget Committees and referenced in the measures. As a general matter, the statements are expected to reflect cost estimates prepared by the Congressional Budget Office (CBO). If this procedure is not followed for a PAYGO measure, then the budgetary effects of the measure are determined by OMB.

Shortly after a congressional session ends, OMB finalizes the two PAYGO scorecards and determines whether a violation of the PAYGO requirement has occurred (i.e., if a debit has been recorded for the budget year on either scorecard). If so, the President issues a sequestration order that implements largely across-the-board cuts in nonexempt direct spending programs sufficient to remedy the violation by eliminating the debit. Many direct spending programs and activities are exempt from sequestration. If no PAYGO violation is found, no further action occurs and the process is repeated during the next session.

The new statutory PAYGO process was created on a permanent basis; there are no expiration dates in the act. The process became effective upon enactment.

As a budget enforcement tool, the new statutory PAYGO process is aimed at preventing, or at least discouraging, net deficit increases arising from the enactment of direct spending and revenue legislation. Any costs designated as emergencies are excluded from the scorecards, and significant costs associated with four specified categories of legislation may be excluded as well. In addition, significant savings stemming from the Community Living Assistance Services and Supports (CLASS) Act, establishing an insurance program for long-term care, are excluded from the scorecards. Finally, debt service costs are excluded as well.

The statutory PAYGO process does not address deficit increases, stemming from changes in direct spending or revenue levels, that are projected to occur under existing law. Other budget enforcement procedures, such as the reconciliation process under the Congressional Budget Act (CBA) of 1974, may be used to reduce deficit levels projected under existing law. Further, the statutory PAYGO process does not apply to discretionary spending, which is provided in annual appropriations acts.

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Background

The congressional budget process was established by the enactment of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), which created the House and Senate Budget Committees and the Congressional Budget Office, and required the annual adoption by Congress of a concurrent resolution on the budget.² After a decade's experience with the budget resolution process, Congress and the President enacted the Balanced Budget and Emergency Deficit Control Act (BBEDCA) of 1985 (Title II of P.L. 99-177), in large part to establish the goal of achieving a balanced budget in the near term and to bolster budget enforcement. The central feature of the 1985 act, in Part C, was a series of declining deficit targets, expected to lead to a balanced budget by FY1991. The deficit targets were enforced by sequestration, a process involving largely across-the-board spending cuts triggered automatically if a deficit target was not met.

Congress and the President were not successful in meeting the deficit targets and, after five years, they established a "pay-as-you-go" (PAYGO) process and limits on discretionary spending under the Budget Enforcement Act of 1990 (Title XIII of P.L. 101-508).³ These changes took the form of amendments to Part C of BBEDCA of 1985.

The two new mechanisms effectively superseded the deficit targets, but sequestration was retained as the means of enforcing them. The statutory PAYGO process applied to direct spending and revenue legislation, while the discretionary spending limits applied to annual appropriations acts. Direct spending, also referred to as mandatory spending, is provided for the most part in substantive laws under the jurisdiction of the House and Senate legislative committees. Direct spending principally funds entitlement programs, such as Social Security, Medicare, federal employee retirement, and unemployment compensation, but it also funds programs of a mandatory nature that are not entitlements. Discretionary spending, on the other hand, is provided in annual appropriations acts under the jurisdiction of the House and Senate Appropriations Committees. Discretionary spending for the most part funds the routine operations of federal departments and agencies. In some instances, such as for Medicaid, a direct spending program

¹ Section 201 states: "The Comptroller General of the Government Accountability Office shall conduct routine investigations to identify programs, agencies, offices, and initiatives with duplicative goals and activities within Departments and governmentwide and report annually to Congress on the findings, including the cost of such duplication and with recommendations for consolidation and elimination to reduce duplication identifying specific rescissions."

² For a detailed explanation of the congressional budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith, and CRS Report RL30297, *Congressional Budget Resolutions: Historical Information*, by Bill Heniff Jr. and Justin Murray.

³ The statutory PAYGO process established in 1990 is explained in CRS Report R41005, *The Statutory PAYGO Process for Budget Enforcement: 1991-2002*, by Robert Keith.

lacks its own funding mechanism and relies on funding provided in an annual appropriations act (but funding for such “appropriated entitlements” is not regarded as discretionary spending).

The statutory PAYGO process and discretionary spending limits were extended by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and by the Budget Enforcement Act of 1997 (Title X of P.L. 105-33); in all, they operated from calendar years 1991 through late 2002. The discretionary spending limits expired on September 30, 2002, and the statutory PAYGO process effectively was terminated on December 2, 2002, with the enactment of P.L. 107-312, which fixed the balances for the remaining years on the PAYGO scorecard (FY2003-FY2006) at zero.⁴ The remaining provisions of Part C of BBEDCA of 1985 expired on September 30, 2006; Part C was not repealed, however, so it has remained in the U.S. Code for several years as obsolete law.

Beginning in 2003, proposals were made from time to time to restore the statutory PAYGO process, but disagreements centered on whether it should apply to both direct spending and revenue legislation (as originally framed and generally favored by Democrats) or only to direct spending legislation (as generally favored by Republicans).

In the 108th Congress, President George W. Bush submitted draft legislation to Congress, the Spending Control Act of 2004, that would have restored the PAYGO process for direct spending legislation but not for revenue legislation; in addition, the proposal would have restored the discretionary spending limits. The House Budget Committee reported a bill, H.R. 3973 (H.Rept. 108-442; March 19, 2004), reflecting the President’s proposal; a comparable measure, H.R. 4663, was considered in the House on June 25, 2004, but failed to pass, by a vote of 146-268.

In the 110th Congress, interest was renewed in restoring a comprehensive PAYGO requirement.⁵ Section 508 (Sense of Congress Regarding Extension of the Statutory Pay-As-You-Go Rule) of the FY2008 budget resolution, S.Con.Res. 21, stated: “It is the sense of Congress that in order to reduce the deficit Congress should extend PAYGO consistent with provisions of the Budget Enforcement Act of 1990.” A similar provision was included, as Section 515, in the FY2009 budget resolution (S.Con.Res. 70).

In addition to the statutory PAYGO process, the House and Senate have relied upon their own, internal PAYGO rules.⁶ The Senate established its PAYGO rule in 1993 and revised it several times over the years.⁷ The House adopted a PAYGO rule in 2007 and revised it in 2009.⁸ The Senate revised its PAYGO rule in 2007 so that the rules of the two chambers would operate in a similar manner; both rules currently are in effect.

The Senate, but not the House, also has established aggregate limits on discretionary spending, subject to a point of order, as part of the annual budget resolution. Proposals have been offered in each chamber, as well, to restore the statutory discretionary spending limits.

⁴ For more information on the termination of the statutory PAYGO process, see CRS Report RS21378, *Termination of the “Pay-As-You-Go” (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith.

⁵ The House Budget Committee held a hearing on the matter, “Perspectives on Renewing Statutory PAYGO,” on July 25, 2007.

⁶ The prior statutory PAYGO process and the House and Senate PAYGO rules are discussed in CRS Report RL34300, *Pay-As-You-Go Procedures for Budget Enforcement*, by Robert Keith.

⁷ The Senate PAYGO rule is explained in CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

⁸ The House PAYGO rule is explained in CRS Report RL33850, *The House’s “Pay-As-You-Go” (PAYGO) Rule in the 110th Congress: A Brief Overview*, by Robert Keith.

Legislative History

On June 9, 2009, President Obama announced that he would submit a PAYGO proposal to Congress, the Statutory Pay-As-You-Go Act of 2009, that would restore a process applying to both direct spending and revenue legislation.⁹ The House responded to the President's proposal first, passing a bill the following month and incorporating it into several other measures toward the end of the session. In January 2010, the Senate added a statutory PAYGO proposal to a measure increasing the debt limit; the House concluded action on the measure in early February, and President Obama signed it into law shortly thereafter.

House Action on H.R. 2920 in 2009

House Majority Leader Steny Hoyer introduced President Obama's proposal on June 17 as H.R. 2920, the Statutory Pay-As-You-Go Act of 2009.

On June 25, the House Budget Committee held a hearing on the proposal, receiving testimony from OMB Director Peter Orszag, among others.¹⁰

On July 22, the House considered and passed H.R. 2920, the Statutory Pay-As-You-Go Act of 2009. The bill differed in significant respects from the proposal submitted by President Obama.¹¹

Prior to action on the bill, the House, by a vote of 243-182, considered and agreed to a special rule, H.Res. 665, providing for the bill's consideration. A modified substitute amendment was incorporated into the bill automatically under a "self-executing" provision in the rule, and a substitute amendment offered by Representative Paul Ryan, the ranking minority member of the House Budget Committee, was defeated, by a vote of 196-234.¹² Following the defeat of a motion to recommit with instructions offered by Representative Ryan, by a vote of 196-234, the House passed the bill, by a vote of 265-166.¹³

⁹ The legislative text of the proposal, along with a section-by-section summary and related documentation, is provided on the OMB website at http://www.whitehouse.gov/omb/news_060909_paygo/.

¹⁰ The hearing testimony is accessible on the House Budget Committee website at <http://budget.house.gov/hearings2009.aspx#06182009>.

¹¹ On July 14, 2009, the Congressional Budget Office issued a document, *An Analysis of H.R. 2920, the Statutory Pay-As-You-Go Act of 2009*, as an attachment to a letter from Director Douglas Elmendorf to Representative Paul Ryan, the ranking minority member of the House Budget Committee. The document is available on the CBO website at <http://www.cbo.gov/ftpdocs/104xx/doc10434/07-14-PAYGO.pdf>.

In addition, CBO issued on July 22, 2009, a letter from the director to Representative Steny Hoyer, the House Majority Leader, on the substitute amendment proposed to H.R. 2920. The document is available on the CBO website at <http://www.cbo.gov/ftpdocs/104xx/doc10466/hr2920.pdf>.

¹² The substitute amendment made in order under H.Res. 665 was printed in Part A (pp. 3-18) of the report of the House Rules Committee (H.Rept. 111-217, July 21, 2009); the modification to the substitute amendment was printed in Part B (p. 18) and the Ryan-submitted amendment was printed in Part C (pp. 18-26). The three amendments were summarized on pp. 2 and 3 of the report.

¹³ *CQ Today*, "Pay-as-You-Go Plan Passes House," by David Clarke, July 22, 2009. See also: BNA's *Daily Report for Executives*, "Conrad Reiterates His Opposition to House Pay-As-You-Go Bill; Floor Action Seen July 22," by Jonathan Nicholson, July 22, 2009, 138 DER G-3; and *CongressNow*, "House PAYGO Bill Faces Steep Senate Climb," by Geof Koss, July 22, 2009.

House Action on Other Measures in 2009

Section 421 of the budget resolution for FY2010 (S.Con.Res. 13) set forth a procedure, applicable only in the House, effectively exempting from the House PAYGO rule and other budget enforcement procedures the costs of legislation in four policy areas: (1) payments to physicians under Medicare (“Doc Fix”), (2) middle class tax reform; (3) reform of the alternative minimum tax (AMT), and (4) reform of the estate and gift tax. In each case, a limitation on the amount of costs subject to exemption was specified in Section 421.¹⁴

In response to concerns regarding the need for strengthened fiscal discipline, the House leadership agreed to incorporate the House-passed text of H.R. 2920 into other measures dealing with the four policy areas identified in Section 421 of the FY2010 budget resolution or further economic stimulus initiatives. During the last two months of the 2009 session, the text of H.R. 2920, as passed by the House, was incorporated into three different measures.

Medicare Physician Payment Reform (H.R. 3961)

In the first instance, the House considered a “Doc Fix” measure, H.R. 3961 (the Medicare Physician Payment Reform Act of 2009), on November 19, 2009, passing it by a vote of 243-183. Under the terms of the special rule governing consideration of the bill, H.Res. 903, the text of the Statutory Pay-As-You-Go Act of 2009, as passed earlier by the House, was added to the engrossed version of H.R. 3961, as Division B.¹⁵

Estate Tax Relief (H.R. 4154)

In the second instance, the House considered a measure dealing with the estate tax, H.R. 4154 (the Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009), on December 3, 2009, passing it by a vote of 225-200. Under the terms of the special rule governing consideration of the bill, H.Res. 941, the text of the Statutory Pay-As-You-Go Act of 2009, as passed earlier by the House, was added to the engrossed version of H.R. 4154, as Division B.¹⁶

“Jobs for Main Street Act” (H.R. 2847)

Finally, in the third instance, the House considered a package of measures under a strategy to bring the 2009 session to a close. On December 16, 2009, the House Rules Committee reported a special rule, H.Res. 976, providing for the consideration of H.R. 3326, the Defense Appropriations Act for FY2010, as well as several other measures, including H.J.Res. 64, a further continuing resolution for FY2010; H.R. 4314, a measure increasing the limit on the public debt; and H.R. 2847, a measure that originated as the Commerce-Justice-Science Appropriations Act for FY2010 but that was being used as a “shell” for other legislation.¹⁷ The special rule

¹⁴ The limitations under Section 421 were modified by Section 2 of H.Res. 665, the rule providing for the consideration of H.R. 2920, the Statutory Pay-As-You-Go Act of 2009, as they applied to the “Doc Fix” and “AMT” exemptions.

¹⁵ See pages 14-53 of the printed bill, as passed by the House and placed on the Senate calendar (Jan. 20, 2010). In subsequent action on H.R. 3961, the Senate replaced the “Doc Fix” and PAYGO language with one-year extensions of expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and the Intelligence Reform and Terrorism Prevention Act of 2004. President Obama signed the measure into law on February 27, 2010, as P.L. 111-141.

¹⁶ See pages 4-43 of the printed bill, as passed by the House and placed on the Senate calendar (Jan. 20, 2010). As of this writing, the Senate has not taken any further action on H.R. 4154.

¹⁷ The regular appropriations for Commerce-Justice-Science programs for FY2010 were provided instead in another act, the Consolidated Appropriations Act, 2010. For further information on this act, see CRS Report R41000,

provided for the consideration of a House amendment to the Senate amendment to the House-passed version of H.R. 2847 that would incorporate into the bill, as a substitute, the text of the “Jobs for Main Street Act, 2010.” Further, Section 5 of the special rule required that in the engrossment of the House amendment, the text of the Statutory Pay-As-You-Go Act of 2009, as passed earlier by the House, be added thereto. The House agreed to H.Res. 976 on December 16, 2009, by a vote of 228-201.

Later on December 16, by a vote of 217-212, the House agreed to the motion offered by Representative David Obey, chairman of the House Appropriations Committee, that the House agree to the amendment to the Senate amendment to H.R. 2847. Pursuant to the special rule, the text of the statutory PAYGO act was incorporated into H.R. 2847, as Division B.¹⁸

House and Senate Action on H.J.Res. 45

The House originated H.J.Res. 45 in April 2009 as a measure solely providing an increase in the limit on the public debt. In January 2010, the Senate considered and passed the measure, modifying the debt-limit increase, adding revised language establishing a statutory PAYGO process, and incorporating another budget-related provision. In early February, the House accepted the Senate’s modifications and cleared the measure for the President.

Initial House Action (2009)

House Joint Resolution 45 originated on April 29, 2009, when the House and Senate reached final agreement on S.Con.Res. 13, the FY2010 budget resolution.

Under House Rule XXVIII (commonly referred to as the “Gephardt Rule”), whenever the two chambers reach final agreement on a budget resolution, the Clerk of the House automatically engrosses and transmits to the Senate a joint resolution changing the limit on the public debt to the level set forth in the budget resolution.¹⁹ The rule provides that the joint resolution is deemed to have passed the House by the same vote by which the House adopted the conference report on the budget resolution.

As deemed passed by the House on April 29, H.J.Res. 45 provided for an increase in the debt limit to \$13.029 trillion, an increase of \$925 billion from the limit of \$12.104 trillion set in Section 1604 (123 Stat. 366) of the American Reinvestment and Recovery Act of 2009 (P.L. 111-5; February 17, 2009). The measure was transmitted to the Senate on April 30 and referred to the Senate Finance Committee.

As the House and Senate worked to bring the 2009 session to a close, another increase in the limit on the public debt was enacted. Representative Charles Rangel, the chairman of the House Ways and Means Committee, introduced H.R. 4314 on December 15. The bill provided for an increase in the debt limit of \$290 billion, from \$12.104 trillion to \$12.394 trillion. The House passed the bill without amendment on December 16, by a vote of 218-214, and the Senate passed it without amendment on December 24, by a vote of 60-39 (under a unanimous consent agreement entered

Consolidated Appropriations Act for FY2010 (P.L. 111-117): An Overview, by Robert Keith.

¹⁸ See pages 120-153 of the printed bill, incorporating the House amendment to the Senate amendment to the House-passed bill (Dec. 16, 2009). The amendment exchange between the House and Senate on H.R. 2847 continued into 2010, but the statutory PAYGO text was removed from the bill.

¹⁹ For additional information on debt-limit adjustment procedures, see CRS Report RL31913, *Developing Debt-Limit Legislation: The House’s “Gephardt Rule”*, by Bill Heniff Jr.; and CRS Report RS21519, *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Bill Heniff Jr.

into on December 22, the amendment had to secure at least 60 votes to be adopted). On December 28, 2009, President Obama signed H.R. 4314 into law, as P.L. 111-123.

Initial Senate Action (2010)

On December 22, 2009, the Senate entered into a unanimous consent agreement providing for the consideration of H.J.Res. 45 early in the following session, on January 20, 2010. Several of the amendments made in order under the agreement pertained to budget enforcement issues, including an amendment to be offered by Senate Majority Leader Harry Reid on “pay go.”²⁰ All of the amendments were subject to a 60-vote threshold for passage.

The Senate considered H.J.Res. 45 during six days over the period covering January 20 through January 28. On January 20, the measure was discharged from the Senate Finance Committee and taken up by the Senate by unanimous consent. Senate Amendment 3299, a substitute for the measure developed by Senate Majority Leader Harry Reid, became the underlying vehicle to which the other amendments were offered. The amendment changed the limit on the public debt proposed by the House, \$13.029 trillion, to a level expected to suffice for the remainder of 2010, \$14.294 trillion.

The Senate agreed to three amendments to Senate Amendment 3299. The most extensive amendment, Senate Amendment 3305, was offered by Majority Leader Reid and set forth the Statutory Pay-As-You-Go Act of 2010. The Senate agreed to the amendment on January 28, by a vote of 60-40, and ultimately it was incorporated into H.J.Res. 45 as Title I.

The second amendment, Senate Amendment 3300, was offered by Senator Max Baucus, the chairman of the Finance Committee, and was intended to protect Social Security. It proposed to do so by establishing a point of order in the House and Senate against the consideration of “any bill or resolution pursuant to any expedited procedure to consider the recommendations of a Task Force for Responsible Fiscal Action or other commission that contains recommendations with respect to” the Social Security program. The Senate agreed to the amendment, as modified, on January 26, by a vote of 97-0, and ultimately it was incorporated into H.J.Res. 45 at the end of Title I, as Section 13.

The final amendment agreed to by the Senate was one of four divisions of Senate Amendment 3303, offered by Senator Tom Coburn. The amendment, which proposed to rescind \$120 billion in duplicative and wasteful spending, was modified (by striking Sections 17 and 18) and divided into four divisions by unanimous consent. On January 26, the Senate agreed to Division I of the amendment, consisting of Section 1, by a vote of 94-0, and ultimately it was incorporated into H.J.Res. 45 as Title II.

In addition to the amendments to Senate Amendment 3299 that were agreed to, the Senate considered several other amendments that failed to garner the minimum of 60 votes that was required by the earlier unanimous consent agreement:

- Senate Amendment 3301, offered by Senator John Thune, would have terminated authority under the Troubled Asset Relief Program (TARP); on January 21, it failed by a vote of 53-45 and was withdrawn;
- Senate Amendment 3302, offered by Senator Kent Conrad, chairman of the Senate Budget Committee, would have established a Bipartisan Task Force for Responsible Fiscal Action; on January 26, it failed by a vote of 53-46 and was withdrawn;

²⁰ See the remarks of Senator Reid in the *Congressional Record* (daily ed.) of December 22, 2009, at p. S13747.

- Senate Amendment 3303, offered by Senator Tom Coburn, as indicated previously, was divided into four divisions and one was agreed to; on January 26, each of the remaining three divisions failed (Division II, by a vote of 46-48, Division III, by a vote of 33-61, and Division IV, by a vote of 37-57) and were withdrawn;
- Senate Amendment 3306, offered by Senator Max Baucus, would have established a Bipartisan Task Force for Responsible Fiscal Action; on January 26, the amendment was withdrawn;
- Senate Amendment 3308, offered by Senator Jeff Sessions, would have added a new section to the Congressional Budget Act of 1974 establishing discretionary spending limits for FY2010-FY2014; on January 28, it failed by a vote of 56-44 and was withdrawn; and
- Senate Amendment 3309, offered by Senator Sam Brownback, would have established a Commission on Congressional Budgetary Accountability and Review of Federal Agencies; on January 28 it failed by a vote of 51-49 and was withdrawn.

During Senate consideration of the measure, motions to invoke cloture on Senate Amendment 3299, Senate Amendment 3305, and the measure itself, H.J.Res. 45, were presented but later withdrawn.

On January 28, the Senate agreed to Senate Amendment 3299, as amended, by a vote of 60-40, and then passed H.J.Res. 45, as amended, by a vote of 60-39.

Final House Action (2010)

The House completed congressional action on H.J.Res. 45 on February 4, 2010, when it agreed to the Senate amendment to the House-passed measure by a vote of 233-187.

The House first agreed to a special rule, H.Res. 1065, providing for the consideration of the Senate amendment, by a vote of 217-212.²¹ During consideration of H.Res. 1065 in the House Rules Committee the day before, a motion by Representative Pete Sessions to make in order an amendment proposed by Representative Randy Neugebauer was defeated by a vote of 4-7. The Neugebauer amendment would have established limits on discretionary spending and a requirement that expansions of direct spending be offset by reductions in other direct spending.

Pursuant to H.Res. 1065, the motion to agree to the Senate amendment was divided into two portions. The first portion, adopting the debt-limit increase (“the matter preceding Title I of the Senate amendment”), went into effect automatically upon agreement to the special rule. The second portion, adopting the remainder of the Senate amendment (Titles I and II), was agreed to by a vote of 233-187.

Approval by President Obama

On February 12, 2010, President Barack Obama signed H.J.Res. 45 into law, as P.L. 111-139 (124 Stat. 8-30). A one-line press statement was issued that day, followed the next day by a short

²¹ See the report of the House Rules Committee to accompany H.Res. 1065, H.Rept. 111-411 (February 3, 2010).

discussion of the “restoration of pay-as-you-go” by President Obama in his weekly radio address.²²

Summary of the Act

Following a brief overview of the act, the main features of the statutory PAYGO process are discussed in more detail below by major topic. Detailed explanations of the act were prepared by the House and Senate Budget Committees and by OMB.²³

Overview

The Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO Act) establishes a process intended, as Section 2 of the act states, “to enforce a rule of budget neutrality on new revenue and direct spending legislation.” The budgetary effects of revenue and direct spending provisions enacted into law, including both costs and savings, are recorded by the Office of Management and Budget (OMB) on two PAYGO scorecards covering rolling five-year and 10-year periods (i.e., in each new session, the periods covered by the scorecards roll forward one fiscal year). The budgetary effects of PAYGO measures are determined by statements inserted into the *Congressional Record* by the chairmen of the House and Senate Budget Committees and referenced in the measures. As a general matter, the statements are expected to reflect cost estimates prepared by the Congressional Budget Office (CBO). If this procedure is not followed for a PAYGO measure, then the budgetary effects of the measure are determined by OMB.

Shortly after a congressional session ends, OMB finalizes the two PAYGO scorecards and determines whether a violation of the PAYGO requirement has occurred (i.e., if a debit has been recorded for the budget year on either scorecard).²⁴ If so, the President issues a sequestration order that implements largely across-the-board cuts in nonexempt direct spending programs sufficient to remedy the violation by eliminating the debit. Many direct spending programs and activities are exempt from sequestration. If no PAYGO violation is found, no further action occurs and the process is repeated during the next session.

The new statutory PAYGO process was created on a permanent basis; there are no expiration dates in the act. The process became effective upon enactment.

As a budget enforcement tool, the new statutory PAYGO process is aimed at preventing, or at least discouraging, net deficit increases arising from the enactment of direct spending and revenue legislation. Any costs designated as emergencies are excluded from the scorecards, and significant costs associated with four specified categories of legislation may be excluded as well.

²² The press statement is available at <http://www.whitehouse.gov/the-press-office/statement-press-secretary-hj-res-45>; the weekly radio address is available at <http://www.whitehouse.gov/the-press-office/weekly-address-president-obama-praises-restoration-pay-you-go>.

²³ The chairmen of the House and Senate Budget Committees inserted largely identical documents, *Section-by-Section Analysis of the Statutory Pay-As-You-Go Act of 2010*, into the *Congressional Record* (daily ed.); see the remarks of Senator Kent Conrad, January 28, 2010, pp. S291-S295, and the remarks of Representative John Spratt, February 4, 2010, pp. H581-H585. A document prepared by OMB, *The Statutory Pay-As-You-Go Act of 2010: A Description*, is available on the agency’s website at http://www.whitehouse.gov/omb/paygo_description/. The document prepared by the House Budget Committee also is available on the OMB website.

²⁴ Section 250(c)(8) of BBEDCA of 1985 defines the term *budget year* as “with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.” The fiscal year runs from October 1 to September 30 and is named for the calendar year in which it ends (e.g., FY2011 will end on September 30, 2011). The *current year* is the fiscal year before the budget year, and an *outyear* is a fiscal year after the budget year.

In addition, significant savings stemming from the Community Living Assistance Services and Supports (CLASS) Act, establishing an insurance program for long-term care, are excluded from the scorecards. Finally, debt service costs are excluded as well.

The statutory PAYGO process does not address deficit increases, stemming from changes in direct spending or revenue levels, that are projected to occur under existing law. Other budget enforcement procedures, such as the reconciliation process under the Congressional Budget Act (CBA) of 1974, may be used to reduce deficit levels projected under existing law. Further, the statutory PAYGO process does not apply to discretionary spending, which is provided in annual appropriations acts.

The Statutory PAYGO Act consists of 13 sections, as shown in **Table 1**, at the end of the report. The act blends together new, freestanding law with amendments or references to sections in the CBA of 1974 and the Balanced Budget and Emergency Deficit Control Act (BBEDCA) of 1985. In the case of the CBA of 1974, Section 3, which sets forth definitions used in the congressional budget process, is made applicable to the new statutory PAYGO process, and Section 308, which pertains to CBO cost estimates and other reports on budgetary legislation, is amended.

The following sections of BBEDCA of 1985 are made applicable to the new statutory PAYGO process, in some cases with modification:

- Section 250 (Table of Contents; Statement of Budget Enforcement Through Sequestration; Definitions);
- Section 255 (Exempt Programs and Activities);
- Section 256 (General and Special Sequestration Rules);
- Section 257 (The Baseline); and
- Section 274 (Judicial Review).²⁵

The core procedural elements of the Statutory PAYGO Act are set forth as new, freestanding law, particularly in Section 4 (PAYGO Estimates and PAYGO Scorecards), Section 5 (Annual Report and Sequestration Order), Section 6 (Calculating a Sequestration), and Section 7 (Adjustment for Current Policies).²⁶

Definition of PAYGO Legislation

The Statutory PAYGO Act defines the term *PAYGO legislation* (and a *PAYGO Act*) as “a bill or joint resolution that affects direct spending or revenues relative to the baseline” (Section 3(7)). Under this definition, several types of measures fall within the purview of the statutory PAYGO process: (1) revenue measures; (2) direct spending measures; (3) hybrid measures, which combine revenue and direct spending provisions; and (4) annual appropriations acts that include direct spending provisions (with effects after the budget year), revenue provisions, or both. In short, any measure that affects direct spending or revenues is PAYGO legislation for purposes of the Statutory PAYGO Act.

²⁵ Sections of BBEDCA of 1985 not cited in this list include Sections 251 and 253, which pertained to discretionary spending limits and deficit targets, respectively, and are not relevant to the PAYGO process; and Sections 252 and 254, which established the original PAYGO procedures and requirements for sequestration reports and orders, respectively, and were replaced by new sections in the 2010 act.

²⁶ The new provisions of law in the Statutory PAYGO Act are codified at 2 U.S.C. 931-939. Amendments to existing law in Part C of BBEDCA of 1985 affect 2 U.S.C. 900 and 905-906; amendments to the CBA of 1974 affect 2 U.S.C. 639.

Revenue measures principally are under the jurisdiction of the House Ways and Means Committee and the Senate Finance Committee. Revenue legislation may amend the Internal Revenue Code of 1986 (Title 26 of the United States Code); the revenue portions of laws governing programs such as Social Security and Medicare; laws dealing with tariffs and trade agreements with other countries; and other laws. In some instances, other House and Senate committees have jurisdiction over legislation affecting fines, certain user fees, or other transactions that are treated as revenues, but such legislation usually affects a very small portion of total revenues.

Many legislative committees in the House and Senate exercise jurisdiction over direct spending legislation. Most direct spending involves entitlement programs that are funded automatically by means of permanent appropriations in substantive law; legislative action may occur to modify such programs, notwithstanding their permanent funding status. In other instances, direct spending is provided through legislative action that occurs on a regular cycle, such as for the periodic farm bill or highway bill, or on an irregular basis, such as for extensions of unemployment compensation during economic downturns.

Hybrid measures may fall within the jurisdiction of a single committee in a chamber (generally the House Ways and Means or Senate Finance Committees), such as in the case of measures affecting Medicare revenues and spending, or fall within the jurisdiction of two or more committees, such as in the case of measures affecting the revenues and spending of transportation trust funds.

Finally, annual appropriations acts, including regular, supplemental, and continuing appropriations measures, provide discretionary spending and are under the jurisdiction of the House and Senate Appropriations Committees. Discretionary spending is not subject to the statutory PAYGO process, but is controlled by other budget enforcement procedures. Some annual appropriations acts, however, may serve as a vehicle for revenue or direct spending provisions under the jurisdiction of other House and Senate Committees. Section 3(4)(C) of the act provides that provisions in annual appropriations acts that “make outyear modifications to substantive law” (except those in which the outlay effects net to zero over a six-year period, including the current year) are covered under the statutory PAYGO process. A provision in an annual appropriations act that affected direct spending only in the current year or the budget year would not be subject to the statutory PAYGO process.²⁷

Assessing the Budgetary Effects of PAYGO Legislation

The *budgetary effects* of PAYGO legislation are defined in the act as “the amount by which PAYGO legislation changes outlays flowing from direct spending or revenues relative to the baseline” (Section 3(4)(A)). There are two types of budgetary effects—*costs*, which involve outlay increases or revenue decreases, and *savings*, which involve outlay decreases or revenue increases. Two elements in assessing the budgetary effects of PAYGO legislation, scoring rules and legislative procedures regarding CBO cost estimates, are addressed separately below.

Scoring Rules

In scoring PAYGO legislation, several rules must be followed. First, the statutory PAYGO process addresses only those budgetary effects that are on budget; the budgetary effects of off-budget

²⁷ The exclusion from the statutory PAYGO process applies to any provision in an annual appropriations act that changes budget authority for direct spending in the current year or the budget year, even if the outlays flowing from the changes occur in the outyears.

entities are not counted (Section 3(4)(B)). A program is given off-budget status only through a specific designation in law. At present, the off-budget entities are the Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund under Social Security, and the Postal Service Fund. These programs also are accorded off-budget status in the congressional budget process and in the President's budget.

Second, the direct spending and revenue impacts of provisions in legislation that are designated as emergency requirements under the act are not counted as budgetary effects (Section 4(g)(4)). Section 4 of the act sets forth procedures for the House and Senate to deal with the issue of designating provisions as emergency requirements. In the House, the chair must "put the question of consideration" prior to the chamber taking any action on a measure including an emergency PAYGO designation. If the House votes affirmatively on the question, then it may proceed to consider the measure. The House also uses the question of consideration as the means of enforcing its internal PAYGO rule. In the Senate, an emergency PAYGO designation may be stricken from a measure by a point of order. To waive the point of order, or to sustain the appeal of the ruling of the chair on a point of order, the affirmative vote of three-fifths of the Members, duly chosen and sworn (60 Senators, if no seats are vacant), must be obtained.²⁸ In this case, the point of order can be applied in a manner so that if successful, the offending provision is stricken but the consideration of the measure (or the conference report thereon) is not defeated.

Third, debt service costs explicitly are excluded from the definition of budget effects provided in the act (Section 3(4)(A)).

Fourth, timing shifts are prohibited to curb possible evasions of enforcement. The prohibition applies to shifts at the end of the 10-year "window," involving the last year covered by the process (the ninth outyear) and the first year not covered by the process (the tenth outyear). Section 3(8) of the act defines a timing shift as:

a delay of the date on which outlays flowing from direct spending would otherwise occur from the ninth outyear to the tenth outyear or an acceleration of the date on which revenues would otherwise occur from the tenth outyear to the ninth outyear.

Thus, costs cannot be shifted out of the window, nor can savings be shifted into the window, as a way of evading enforcement. The prohibition is incorporated into Section 308 of the CBA of 1974, pertaining to CBO cost estimates, as amended by the act (Section 4(b)(1)).

Finally, costs associated with legislation dealing with "current policy" in four specified areas—Medicare physicians' payments, the estate and gift tax, the alternative minimum tax (AMT), and certain income tax cuts for the middle-class enacted in 2001 and 2003—may be excluded within constraints set forth in the act. Section 4(c) of the act sets forth procedures for adjusting the estimates of budgetary effects of legislation in the four specified areas, and Section 7 of the act sets forth specific criteria that must be met so that the adjustments can be made.²⁹ In general, the authority to make adjustments is provided so that Congress can enact legislation extending current policies in these areas for defined periods without having to offset the significant costs of doing so; the current policies either expired at the end of 2009 or will expire by the end of 2010. The authority to make adjustments remains in effect through December 31, 2011.

²⁸ See, for example, Senate consideration on March 25, 2010, of H.R. 4872, the Health Care and Education Reconciliation Act of 2010, during which several motions to waive Section 4(g) of the Statutory PAYGO Act were rejected.

²⁹ These features of the Statutory PAYGO Act are explained in detail in Senator Kent Conrad, *Section-by-Section Analysis of the Statutory Pay-As-You-Go Act of 2010*, op. cit.

The period for which the current policies can be extended with adjustments made for statutory PAYGO purposes varies, from two years for the estate and gift tax and the AMT, to five years for Medicare physicians' payments, to permanently for the middle-class tax cuts. In addition, the act includes provisions intended to ensure that the adjustments are not used to provide for more generous policies over a shorter time period, or that savings achieved by not making the full adjustments allowed are not used to offset initiatives in other policy areas. As explained by the Senate Budget Committee:

The cost of continuing these policies over the specified period is larger than the cost of letting them expire, as would happen under current law. The adjustment allows Congress to address these policies without having the cost added to the PAYGO scorecard. The difference between these two estimated costs is the maximum adjustment that may be used to offset the cost of legislation addressing each specified policy for the purposes of PAYGO enforcement. If the estimate of the legislation has a greater budgetary effect than the maximum amount of the adjustment, then the adjustment can be used to offset a portion of its cost. The additional cost would be counted for statutory PAYGO purposes. If a less costly policy is enacted, any remaining amount in the adjustment cannot be used to offset the cost of policies in other areas (as specified in Section 4(c)(3) of the PAYGO statute).

In addition, the adjustments in each policy area are further limited to prevent using the full amount of the available adjustment to offset the cost of a more generous policy for a shorter period. Under this limitation, the amount of the adjustment is estimated consistent with the time period covered by the eligible policy action.³⁰

Legislative Procedures Regarding CBO Cost Estimates

The budgetary effects of PAYGO legislation to be recorded on the PAYGO scorecards may be determined either by Congress or by OMB. Congress may determine the budgetary effects of a measure by following legislative procedures specified in Section 4 of the act. If Congress does not follow these procedures, then OMB determines the budgetary effects of the measure.

The procedures by which Congress would determine the budgetary effects of legislation for statutory PAYGO purposes generally would operate in the following manner. First, the chairman of the House or Senate Budget Committee, as applicable, would request a "CBO PAYGO estimate" for a measure. Prior to the vote on passage of the measure in the House or Senate, the chairman of the respective Budget Committee would insert into the *Congressional Record* a statement titled "Budgetary Effects of PAYGO Legislation" providing the necessary information on the costs of the measure and any current policy adjustments made under Section 7 of the act.³¹ In cases involving a conference agreement or an amendment between the two chambers, the two chairmen would jointly insert a statement into the *Congressional Record*.³²

In addition, the text of the measure would include a reference to the statement using language set forth in the act: "The budgetary effects of this Act, for the purpose of complying with the

³⁰ Ibid, p. S294.

³¹ See, for example, the remarks of Representative John Spratt in the *Congressional Record* (daily ed.) of February 25, 2010, at p. H930 (regarding H.R. 4691, the Temporary Extension Act of 2010, which the House passed later that day), and the remarks of Senator Kent Conrad in the *Congressional Record* (daily ed.) of May 7, 2010, at p. S3431 (regarding an amendment in the nature of a substitute to H.R. 3619, the Coast Guard Authorization Act for Fiscal Year 2010 and 2011, which the Senate passed later that day).

³² See, for example, the remarks of Representative John Spratt in the *Congressional Record* (daily ed.) of May 28, 2010, at p. H4211 (regarding the House amendment to the Senate amendment to H.R. 4213, the American Jobs and Closing Tax Loopholes Act, which the House agreed to later that day).

Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this act, ..., provided that such statement has been submitted prior to the vote on passage....” The portions omitted from the quoted language would address: (1) whether the statement had been submitted by the chairman of the House Budget Committee or Senate Budget Committee (or jointly, in the case of a conference agreement or amendments between the Houses); and (2) the nature of the vote on passage.³³

As the legislative process unfolds in both chambers, multiple statements may be generated. A new, valid statement supersedes a previous statement. For the budgetary effects in the statement to be recorded by OMB on the PAYGO scorecards, the measure enrolled and signed into law by the President must contain a proper reference in the text to a valid statement. Violations of the prescribed procedures (e.g., deviating from the required text of a legislative reference or failing to insert a statement into the *Congressional Record* before a vote on final passage) could invalidate the congressional determination of a measure’s budget effects, and the effects would be determined in that case by OMB. Congressional determinations of the budgetary effects of PAYGO measures in enacted form may reflect a determination made by one chamber and unchanged by the other, made by one chamber but changed by the other, or made by both chambers in a compromise at the stage of resolving differences.

The Statutory PAYGO Act reaffirms the authority of the House and Senate Budget Committees to make final determinations of the budgetary effects of legislation under Section 312 of the CBA of 1974 (Section 12).

PAYGO Scorecards

OMB is required to maintain two PAYGO scorecards, a 5-Year Scorecard and a 10-Year Scorecard, on which the budgetary effects of PAYGO legislation are recorded (Section 4(d)). For each PAYGO act, OMB must use the budgetary effects included by reference in the measure. In general, the budgetary effects are estimated by CBO in accordance with the baseline methodology set forth in Section 257 of BBEDCA of 1985. If a valid reference is not included in the PAYGO act, then OMB must determine the measure’s budgetary effects, using the same economic and technical assumptions that underlie the President’s most recent budget submission.

OMB must display on the scorecards the budgetary effects of PAYGO legislation in each year over the 5-year and 10-year periods, beginning with the budget year. In recording the budgetary effects of a PAYGO act on the scorecards, OMB must adhere to the following rules:

- **Look Back**—the budgetary effects for the current year of a PAYGO measure enacted during a session are combined with the budgetary effects for the budget year, thereby closing a potential enforcement loophole (Section 4(e));
- **Averaging**—for the 5-Year Scorecard, an average is derived for the cumulative budgetary effects of a PAYGO measure over the five fiscal years (with the budgetary effects for the current year added to the effects for the budget year), and entered for each of the five years on the scorecard; the same process is

³³ For an example of the required reference, see Section 562 (PAYGO Compliance) of P.L. 111-147, the Hiring Incentives to Restore Employment Act, at 124 Stat. 117-118, which reads: “The budgetary effects of this Act, for purposes of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, jointly submitted for printing in the Congressional Record by the Chairman of the House and Senate Budget Committees, provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendments between the Houses.”

followed for the 10-Year Scorecard with regard to the cumulative budgetary effects of the measure over ten years, plus the current year (Section 4(f));

- **Emergency Legislation**—the amounts of new budget authority, outlays, or revenue that result from a provision designated as an emergency in a PAYGO measure are not included in the estimates made by CBO or OMB of the measure’s budgetary effects, and therefore are not recorded on the PAYGO scorecards (Section 4(g)); and
- **CLASS Act Savings**—the scorecards must exclude the net savings from legislation titled the “Community Living Assistance Services and Supports Act,” which establishes a Federal insurance program for long-term care, if enacted or subsequently amended after enactment of the Statutory PAYGO Act (Section 4(d)(6)). (The CLASS Act was enacted into law on March 23, 2010, as Title VIII of P.L. 111-148, the Patient Protection and Affordable Care Act.)

OMB is required to update the scorecards continuously and to make them publicly available. OMB has made the scorecards available on its website at http://www.whitehouse.gov/omb/paygo_default/.

Table 2, at the end of the report, shows a hypothetical example of how the data from a CBO cost estimate on a PAYGO act would be recorded by OMB on the 5-Year and 10-Year Scorecards for the FY2011 budget cycle. In this example, CBO has estimated a cost of \$25 billion for the budget year (FY2011) and \$10 billion for the first outyear (FY2012), but escalating savings amounting to \$35 billion for the next three outyears. Over the five-year period covering FY2011-FY2015, the costs and savings exactly offset, yielding a deficit-neutral estimate. The estimate also shows a cost of \$15 billion for the current year (FY2010), however, which must be included under the look-back feature. Consequently, the cumulative budgetary effect of the PAYGO measure, for purposes of the 5-Year Scorecard, is a cost of \$15 billion. The \$15 billion cost is averaged over the five-year period, yielding a \$3 billion cost to be entered for each of the five years on the scorecard.

In this example, the CBO cost estimate shows annual savings of \$5 billion for each of the five remaining outyears (FY2016-FY2020) of the 10-year period. For purposes of the 10-Year Scorecard, the cumulative budgetary effect of the PAYGO measure over the 10-year period covering FY2011-FY2020, taking into account the budgetary effects for the current year as required by the look-back feature, is a savings of \$10 billion. The \$10 billion saving is averaged over the 10-year period, yielding a \$1 billion saving to be entered for each of the ten years on the scorecard.

Annual PAYGO Report and Sequestration Order

The OMB must issue an annual PAYGO report not later than 14 days (excluding weekends and holidays) after Congress adjourns to end a session (Section 5(a)). In addition to information regarding any sequestration that may be required, as discussed below, the report must include the following matters:

- an up-to-date document containing the 5-Year and 10-Year PAYGO scorecards;
- a description of any current policy adjustments made under Section 4(c);
- information about emergency legislation (if any) designated under Section 4(g); and
- other data and explanations that enhance public understanding of the act and the actions taken thereunder.

The annual PAYGO report must be printed in the *Federal Register* and made publicly available by OMB.

If the annual PAYGO report indicates that no PAYGO violation has occurred, then no further action must be taken. However, if the report indicates that a PAYGO violation has occurred, by showing a *debit* (i.e., the “net total amount” by which costs exceed savings) for the budget year on either scorecard, then the President must issue a sequestration order to offset the debit (Section 5(b)). If there is a debit on both scorecards, then the sequestration order must fully offset the larger of the two debits.

To offset a debit for the budget year, a sequestration order reduces the budgetary resources of direct spending programs for that year. The resulting outlay savings in the budget year and the subsequent fiscal year must together be sufficient to offset the debit.

In the hypothetical example provided in **Table 2**, if the single PAYGO measure used in the example were the only PAYGO measure to be enacted during the 2010 session and reflected in OMB’s annual PAYGO report for FY2011, then a sequester would be required to offset the \$3 billion debit for FY2011 recorded on the 5-Year Scorecard. The 10-Year Scorecard would be irrelevant in this instance because it would show a savings (of \$1 billion) for FY2011.

If a sequester is required, then OMB must prepare the sequestration order for the President and include it in the annual PAYGO report; both the order and the report must be transmitted to the House and Senate. In this instance, the annual PAYGO report must include, for each budget account to be sequestered:

- estimates of the baseline level of budgetary resources subject to sequestration;
- the amount of the budgetary resources to be sequestered; and
- the outlay reductions that will occur in the budget year and the subsequent fiscal year because of the sequester.

A sequestration order issued by the President takes effect immediately.

Figure 1 illustrates the requirements pertaining to the issuance of the annual PAYGO report by OMB and the issuance of a sequestration order by the President, if required.

Coverage and Exemptions

The Statutory PAYGO Act applies generally to provisions in legislation that affect the direct spending and revenues of on-budget entities. As mentioned previously, the direct spending and revenues of off-budget entities (consisting of the Social Security trust funds and the Postal Service Fund) are excluded from the statutory PAYGO process.

Coverage under the process may be viewed from the perspective of (1) how programs are treated with respect to estimating their budgetary effects; and (2) whether they are covered or exempted from a sequestration order or subject to special rules that limit any reduction made under an order.

As discussed previously, direct spending and revenue amounts in the following instances are excluded from the assessment of the budgetary effects of PAYGO legislation: (1) provisions designated as emergency requirements; (2) debt service costs; (3) timing shifts; and (4) net savings from the CLASS Act. In addition, costs associated with four specified categories of legislation (Medicare physicians’ payments, the estate and gift tax, the alternative minimum tax, and certain “middle-class” tax cuts) may be excluded within limits set forth in the act.

Section 255 of BBEDCA of 1985 lists mandatory programs and activities that are exempt from reduction under any sequestration order issued by the President. The section is amended by

Section 11 of the Statutory PAYGO Act to update the existing list for changes in account structure and headings and other changes, to add new accounts and programs (such as the Children's Health Insurance Program and economic recovery programs), and to clarify the treatment of certain transportation programs subject to obligation limitations in annual appropriations acts.

Figure 1. Issuance of the Annual PAYGO Report and Sequestration Order

Not later than 14 days after Congress adjourns to end a session— (not counting weekends and holidays)	
Debit on OMB Scorecard(s)? —NO	Debit on OMB Scorecard(s)? —YES
If there is no debit for the budget year on the 5-Year and 10-Year PAYGO Scorecards, then:	If there is a debit for the budget year on the 5-Year Scorecard, 10-Year Scorecard, or both Scorecards, then:
(1) OMB issues the Annual PAYGO Report, placing it in the <i>Federal Register</i> and making it available publicly; and	(1) OMB prepares a sequestration order for the President and includes it in the annual PAYGO report, which is transmitted to the House and Senate;
(2) no further action is required.	(2) the President issues the required sequestration order; and
	(3) departments and agencies immediately implement the sequestration order, which reduces budgetary resources for accounts for the budget year (as specified in OMB's annual PAYGO report).

Source: Prepared by the Congressional Research Service.

Note: The procedures reflected in the figure are set forth in Section 5 of the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139). "OMB" refers to the Office of Management and Budget.

The programs and activities exempt from sequestration under Section 255, as amended, include Social Security and Tier I Railroad Retirement benefits; federal employee retirement and disability programs; veterans' programs; net interest; refundable income tax credits; Medicaid, CHIP, SNAP, SSI, TANF, and certain other low-income programs; and unemployment compensation, among others.

Finally, sequestration rules set forth in Section 256 of BBEDCA of 1985 (as amended by Section 10 of the Statutory PAYGO Act) and in Section 6 of the act, limit the size of the reduction that can be made under a sequestration order in spending for Medicare. The reduction limit, which is 4%, effectively exempts most Medicare spending from a sequestration order.³⁴

³⁴ In addition, Section 256(e) of BBEDCA of 1985, as amended by the Statutory PAYGO Act, limits a reduction under a sequestration order to 2% for accounts funding community health centers, migrant health centers, Indian health facilities, Indian health services, and veterans' medical care. Nearly all of the spending associated with these items, however, is discretionary; the Indian health services account, at this time, has \$150 million in direct spending for

Sequestration Calculations

If it is determined by OMB that a PAYGO violation has occurred and that a sequester must occur to eliminate a debit for the budget year on the appropriate PAYGO scorecard, then OMB calculates the uniform reduction percentage by which the budgetary resources for accounts must be reduced to eliminate the debit. Budgetary resources, as defined in Section 250(c)(6) of BBEDCA of 1985, include new budget authority, unobligated balances, direct spending authority, and obligation limitations (the latter category, obligation limitations, does not apply to direct spending and therefore is not relevant for purposes of the PAYGO process). Sequestration calculations are made pursuant to rules set forth in Section 6 of the Statutory PAYGO Act and Section 256 of BBEDCA of 1985, as amended by the act.

The first step is to determine the size of the sequestrable base, that is, the total amount of budgetary resources for direct spending programs subject to sequestration. In the next step, the total amount of budgetary resources that must be reduced to yield the required outlay savings in the budget year and the subsequent fiscal year is determined. A uniform reduction percentage applicable to all nonexempt accounts then is calculated by dividing the total amount of budgetary resources to be reduced by the total amount of budgetary resources in the sequestrable base.

If the uniform reduction percentage is less than 4%, then the reduction is applied to all nonexempt accounts. If the percentage is greater than 4%, then a 4% reduction is made in Medicare spending (the maximum reduction allowed for that program), and the uniform reduction percentage for the remaining programs is recalculated and increased by the amount necessary to achieve the reductions required to eliminate the debit.

Table 3, at the end of the report, illustrates sequestration calculations under an hypothetical example. While total direct spending amounts to well over \$2 trillion in budgetary resources, most is exempt from the statutory PAYGO process. Consequently, the sequestrable base in this hypothetical example is set at \$640 billion. The total consists of \$575 billion attributable to Medicare and the rest attributable to all other nonexempt programs.

For purposes of this example, it is assumed that a \$30 billion debit must be eliminated from one of the two PAYGO scorecards maintained by OMB, and that a reduction in the budget year of \$30 billion in budgetary resources will be required.

Under the rules used for calculating a sequester, the reduction to Medicare spending is limited to 4%, which in this case is \$23 billion. An additional reduction of \$7 billion in budgetary resources is required to be made in the other nonexempt programs. Dividing the reduction amount (\$7 billion) into the sequestrable base for the other programs (\$65 billion) results in a uniform reduction percentage of 10.77%.

Under these procedures, a required \$30 billion reduction in budgetary resources for the budget year was made by reducing Medicare spending by the maximum 4% (\$23 billion) and the remaining nonexempt programs by 10.77% (\$7 billion), resulting in the outlay savings (\$30 billion) in the budget year and the subsequent fiscal year needed to eliminate the debit.

FY2011, but none for subsequent fiscal years. In view of the relatively negligible amount available for reduction under a sequestration order (a maximum of about \$3 million), the 2% limitation is not addressed in the remainder of this report.

Limitation on Changes to the Social Security Act

Section 13 of the Statutory PAYGO Act establishes a point of order in the House and Senate against the consideration pursuant to any expedited procedures of legislation setting forth proposals of a Task Force for Responsible Fiscal Action or other commission, if those proposals contain recommendations regarding Social Security spending or revenues. In particular, the limitation applies to recommendations:

... with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act, or the taxes received under subchapter A of chapter 9; the taxes imposed by subchapter E of chapter 1; and the taxes collected under section 86 of part II of subchapter B of chapter 1 of the Internal Revenue Code.

In the Senate, an affirmative vote of three-fifths of the Members, duly chosen and sworn (60 votes, if no seats are vacant), is required to waive the point of order or to sustain an appeal of the ruling of the Chair on the point of order.

The limitation is comparable to a restriction in Section 310(g) of the CBA of 1974 that bars the consideration in the House and Senate of reconciliation legislation which contains recommendations with respect to Social Security.³⁵

Section 13 originated as a Senate floor amendment (S.Amdt. 3300, offered by Senator Max Baucus) that was agreed to on January 26, 2010, as discussed previously.

The Senate also considered two amendments that day that proposed to establish a Bipartisan Task Force on Responsible Fiscal Action. The first one, S.Amdt. 3302, offered by Senator Kent Conrad, in part set forth expedited procedures in the House and Senate for the consideration of a measure embodying the Task Force's recommendations; it was defeated by a vote of 53-46 (having failed to secure the minimum 60 votes required by a unanimous consent agreement). The second one, S.Amdt. 3306, offered by Senator Baucus, also would have established a Task Force, but it did not set forth any expedited procedures for House and Senate consideration of its legislative recommendations; the amendment was withdrawn.

Had the Conrad amendment (3302) been adopted, the Baucus amendment (3300) that became Section 13 of the act would have excluded recommendations regarding Social Security spending or revenues from any Task Force recommendations considered under expedited procedures in the House and Senate.

In the wake of unsuccessful action in the Senate to create a task force, President Barack Obama created the National Commission on Fiscal Responsibility and Reform by executive order (E.O. 13531) on February 18, 2010.³⁶ The executive order requires that the commission vote on approval of a final report on December 1, 2010, but it does not provide for expedited consideration by the House or Senate of the Commission's recommendations.

³⁵ In addition, the Senate's Byrd rule (Section 313 of the CBA of 1974) prohibits the inclusion of extraneous matter in reconciliation legislation, which includes recommendations with respect to Social Security.

³⁶ The text of the executive order, which was inserted in the *Federal Register* of February 23, 2010, may be found at <http://www.gpoaccess.gov/presdocs/2010/DCPD-201000104.pdf>.

Table I. Contents Listing of P.L. 111-139

Provision	Content	Statutes-at-Large Citation
Resolving Clause	[increase in the statutory limit on the public debt in 31 U.S.C. 3101 to \$14.294 trillion]	124 Stat. 8
Title I – Statutory Pay-As-You Act of 2010		
Sec. 1	Short Title	124 Stat. 8
Sec. 2	Purpose	124 Stat. 8
Sec. 3	Definitions and Applications	124 Stat. 8
Sec. 4	PAYGO Estimates and PAYGO Scorecards	124 Stat. 9
	(a) PAYGO Estimates	124 Stat. 9
	(b) CBO PAYGO Estimates	124 Stat. 11
	(c) Current Policy Adjustments for Certain Legislation	124 Stat. 12
	(d) OMB PAYGO Scorecards	124 Stat. 13
	(e) Look-Back to Capture Current-Year Effects	124 Stat. 14
	(f) Averaging Used to Measure Compliance Over 5-Year and 10-Year Periods	124 Stat. 14
	(g) Emergency Legislation	124 Stat. 14
Sec. 5	Annual Report and Sequestration Order	124 Stat. 15
	(a) Annual Report	124 Stat. 15
	(b) Sequestration Order	124 Stat. 15
Sec. 6	Calculating a Sequestration	124 Stat. 16
	(a) Reducing Nonexempt Budgetary Resources by a Uniform Percentage	124 Stat. 16
	(b) Outlay Savings	124 Stat. 16
Sec. 7	Adjustment for Current Policies	124 Stat. 16
	(a) Purpose	124 Stat. 16
	(b) Duration	124 Stat. 17
	(c) Medicare Payments to Physicians	124 Stat. 17
	(d) Estate and Gift Tax	124 Stat. 17
	(e) AMT Relief	124 Stat. 18
	(f) Permanent Extension of Middle-Class Tax Cuts	124 Stat. 19
	(g) Indexing for Inflation	124 Stat. 20
	(h) Guidance on Estimates and Current Policy Adjustments	124 Stat. 21
Sec. 8	Application of BBEDCA	124 Stat. 21
Sec. 9	Technical Corrections	124 Stat. 21
	[untitled subsections (a) and (b)]	124 Stat. 21
Sec. 10	Conforming Amendments	124 Stat. 21
	[untitled subsections (a) through (d)]	124 Stat. 21
Sec. 11	Exempt Programs and Activities	124 Stat. 23
	(a) Designations	124 Stat. 23
	(b) Social Security, Veterans Programs, Net Interest, and Tax Credits	124 Stat. 23
	(c) Other Programs and Activities, Low-Income Programs, and Economic Recovery Programs	124 Stat. 23
	(d) Additional Excluded Programs	124 Stat. 28

Provision	Content	Statutes-at-Large Citation
Sec. 12	Determinations and Points of Order	124 Stat. 29
Sec. 13	Limitation on Changes to the Social Security Act	124 Stat. 29
	(a) Limitation on Changes to the Social Security Act	124 Stat. 29
	(b) Waiver	124 Stat. 29
	(c) Appeals	124 Stat. 29
<i>Title II – Elimination of Duplicative and Wasteful Programs</i>		
Sec. 21	Identification, Consolidation, and Elimination of Duplicative Government Programs	124 Stat. 29

Source: Prepared by the Congressional Research Service.

Table 2. Hypothetical Example of Recording a Cost Estimate for a PAYGO Act on the PAYGO Scorecards

(amounts in billions of dollars)

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	5- Year Total	10- Year Total
CBO Cost Estimate on a PAYGO Act	15	25	10	-5	-10	-20	-5	-5	-5	-5	-5	15	-10
Averaged Entry on OMB 5-Year Scorecard		3	3	3	3	3							
Averaged Entry on OMB 10-Year Scorecard		-1	-1	-1	-1	-1	-1	-1	-1	-1	-1		

Source: Prepared by the Congressional Research Service.

Notes: “CBO” refers to the Congressional Budget Office and “OMB” refers to the Office of Management and Budget. The procedures reflected in the figure are set forth in Section 4 of the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139); the dollar amounts used in the example are completely hypothetical. In this example, the CBO cost estimate covers the current year (FY2010), the budget year (FY2011), and nine outyears (FY2012-FY2020). Under the “look back” feature in Section 4(e) of the Statutory Pay-As-You-Go Act of 2010, OMB must combine any budgetary effects for the current year with those for the budget year when calculating the entries for the 5-Year Scorecard and 10-Year Scorecard. Further, under Section 4(f) of the act, the cumulative budgetary effects for the 5-year and 10-year periods, plus those for the current year, must be averaged over 5 and 10 years and the averages entered for each year of the scorecard, as appropriate.

Table 3. Hypothetical Example of Sequestration Calculations for a Fiscal Year
(amounts in billions of dollars)

	Budgetary Resources
Sequestrable Base (Nonexempt Direct Spending Programs)	640
Medicare	575
All Other Nonexempt Programs	65
—	
To eliminate a debit of \$30 billion from the PAYGO scorecard(s), it is assumed in this example that budgetary resources would have to be reduced under a sequestration order by \$30 billion, as follows:	
Medicare (reduction limited to 4% of base)	23
All Other Nonexempt Programs (reduction made using a uniform percentage)	7
—	
To achieve a \$7 billion reduction from a sequestrable base of \$65 billion for “All Other Nonexempt Programs,” a uniform reduction percentage of 10.77% would be applied to the budgetary resources for each nonexempt account	

Source: Prepared by the Congressional Research Service.

Notes: The dollar amounts used in the example are completely hypothetical. Budgetary resources, as defined in Section 250(c)(6) of BBEDCA of 1985, include new budget authority, unobligated balances, direct spending authority, and obligation limitations (the latter category, obligation limitations, does not apply to direct spending and therefore is not relevant for purposes of the PAYGO process).

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